

If the principal parties thereto change their agreement, there springs into being a new contract, to which the sureties are strangers; and, if the guaranty of its performance is desired, it must be obtained *de novo*. Of this a learned judge said as follows:

"Now, it must always be recollected in what manner a surety is bound. You bind him to the letter of his engagement. Beyond the proper interpretation of that engagement you have no hold upon him. He receives no benefit and no consideration. He is bound, therefore, merely according to the proper measure and effect of the written engagement he has entered into. If that written engagement is altered in a single line, no matter whether it be altered for his benefit, no matter whether the alteration be innocently made, he has a right to say: 'The contract is no longer that for which I engaged to be the surety. You have put an end to the contract I guaranteed, and my obligation therefore is at an end.'" *Blest v. Brown*, 6 Law T. (N. S.) 620.

This holding illustrates the tendency of the rule. In any case, the surety, in binding himself to the first contract, limited rigidly his liability to that instrument, and its scope measures with precision his undertaking. If he consented to vouch unwisely, he is entitled to suffer to the full measure of his folly, without a favorable revision of his liability by the principal. And, on the other hand, it is his right to fix the final boundary of his faith in the financial, and, in the case of a building contract, the architectural, capacity of his principal, and mark out in the agreement whatever method should attend the execution of the work; and the main contracting parties may not add ever so little to the burden which the contractor has assumed, or deviate from the methods which were to accompany its fulfillment. It results from this that he who would charge a surety for his principal's breach of contractual duty must travel without deviation the way pointed out in the contract, however iron-bound it may be, for there is for the surety in the enforcement of his bond no equity nor latitude beyond its strict terms. Such is the nature of the implied condition upon which the surety's liability depends.

In the case at bar the plaintiff is bound, when a breach of condition is alleged, to plead performance or waiver of the condition, which waiver would be inferred from a consent to the change of location. But this it has failed to do, because, from the nature of the case, it could not be done. At this juncture the seventh article does not aid. That article consents to changes in the plans and specifications "annexed" to the contract, and the whole article has immediate and sole reference thereto, and does not provide for alteration in the location of the structure itself, which location is no part of the plans and specifications, but has its own distinct place in the contract. Therefore there seems to be no saving clause respecting this change of location, and the case falls within the stern rules which have been presented. Some knowledge of the strictness with which the law here involved has been applied may be obtained from a consideration of similar contracts.

In *U. S. v. Corwine*, 1 Bond, 339, 25 Fed. Cas. 671, the principals bound themselves to the United States to open a ship canal 300 feet wide and 20 feet deep, and keep it open, of such dimensions, for 4½ years from the time of acceptance by the secretary of war. The

principals did not perform their agreement for opening the canal according to its terms, and the government accepted the work with a channel only 18 feet in depth. The sureties of the contractor were released by the change in the terms of the contract.

In *U. S. v. Tillotson*, 1 Paine, 305, Fed. Cas. No. 16,524, a person made a contract with the war department to build a fort, in which it was provided that the fortification was principally, as to the revetment walls, to be built of brick, and thereafter there was an auxiliary contract, by which it was agreed that, in place of brick, a certain composition, called "tapia," which was a species of artificial stone formed by a union, in proper proportions, of sharp sand, fresh lime, and oyster shells, with water sufficient to produce adhesion, should be used in such portions of the walls as should be designated by the superintending engineer, and the contractor stipulated to receive \$10 for every cubic yard of tapia, instead of \$11 for every cubic yard of brickwork as mentioned in the agreement. This was held to be a material alteration, and released the contractor's surety.

In *U. S. v. Case* (U. S. Cir. Ct. 2d Cir. 1879) 25 Int. Rev. Rec. 56, Fed. Cas. No. 14,743, the guarantors undertook that a bidder for a contract to furnish stone about to be let by the plaintiff would, in case the contract was awarded to him, enter into the contract, with sufficient sureties, to furnish the material in conformity to the terms of the advertisement under which the bid was made. It was held, under the facts presented, that the undertaking was that a contract should be executed to furnish stone of a description designated by a sample which was to accompany the proposal, and that the guarantors were released when the bid was to furnish a different kind of stone from certain quarries.

In *Mundy v. Stevens*, 9 C. C. A. 366, 61 Fed. 77, sureties for the payment by a contractor to a subcontractor of all moneys received for work under a government contract as provided in the contract were released by an alteration of such agreement, whereby the right secured to the original contractors to deduct from the monthly payments 3 cents per yard for material dredged subsequently was modified so that payments of 2½ cents per cubic yard should be made monthly.

In *U. S. v. Boecker*, 21 Wall. 652, it was held that where a distiller's bond recited that a person is about to be the distiller at one place, to wit, "at the corner of Hudson street and East avenue, situate in the town of Canton," his sureties are not liable for taxes in respect of business carried on by him at another, as "at the corner of Hudson and Third streets," in the same town, even though he had no distillery whatever at the first-named place, about four squares from the last-named place.

In *Grant v. Smith*, 46 N. Y. 93, it was decided that a change of a contract to purchase a steam engine and two boilers of a given capacity and power, at an agreed price, by which an engine with three boilers, and of greater capacity and power was substituted, at an additional price, released the sureties.

In *Ludlow v. Simond*, 2 Caines, Cas. 1, it was held that, where a surety agreed to make good a deficiency in the sale of property at a